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Department of Personnel

Guide for Transition of Exempt Employees

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The Department of Personnel (DOP) is pleased to offer this resource guide for exempt employees seeking new employment opportunities and employers with exempt employees who may be facing a career transition. This guide provides information about exempt employment and gives an overview of career and transition services.

Employment in Exempt Positions

Exempt employment in the State of Washington is governed by RCW 41.06 which allows a limited number of exempt positions. Exempt employment is considered “at will” and means that there are no contractual employment rights and exempt employees serve at the pleasure of the appointing authority. The Civil Service Rules do not apply to positions specifically exempted in individual agency statutes and chapter 41.06 RCW. Exempt employees, because they are not subject to the Civil Service Rules, do not have appeal rights upon termination.

Laws (RCWs) and rules (WACs) were adopted in the early 1970s to encourage classified employees to move into exempt positions by providing an assurance of continued employment after the termination of the exempt appointment. This means exempt employees who were appointed from permanent classified positions have return rights. The return right shall be to the highest classification held permanently, or to a position of similar nature and salary. If the return right is to a filled position, the employee with the lowest retention rating or the least senior incumbent is laid off.

Layoff actions are highly technical in nature and should be addressed on a case-by-case basis. There are no RCWs or WACs that set forth a required layoff procedure, as exempt service is not subject to the Civil Service Rules. The agency human resource manager should be involved early in each specific action. Department of Personnel staff can be reached for assistance at (360) 664-6325 or email at Rules@dop.wa.gov.

Exempt employees who did not leave classified service to accept an exempt appointment are not entitled to automatically move into classified service. They should follow the standard recruitment, examination, referral and appointment processes that apply to employees who do not have permanent status in General Service or Washington Management Service.

Return from Exempt Appointment

- Employees who held permanent status in a classified position without a break in service prior to their exempt appointment have statutory return rights to classified service.
- The return right is to the highest class of position in which the employee held permanent status. This does not necessarily mean returning to the most recent agency.
- If the highest class of position is not available, the employee may be returned to a position that is **similar** in nature and salary.
 - **Similar in nature** means work that is generally like the functions performed in the highest class of position previously held.
 - **Similar in salary** means the same salary range of the highest class of position. If an employee is returned to a similar position, the salary must be at the salary level of the highest class of position.
- The ideal return is to a vacant position. If the employee must be returned to a filled position, of the two employees, the one with the least seniority and/or retention rating is bumped out of the position through a layoff action.
- The Washington Management Service (WMS) is classified employment. Exempt employees who left a WMS position with permanent status for an exempt position will have return rights to a WMS position.
- Exempt employees who have never held classified status or who had a break in service prior to their exempt appointment, do not have a statutory right of return; however, there are several other options to consider:
 - ✓ Washington Management Service - flexible hiring processes; management and policy positions for which these employees may be well suited.
 - ✓ Exempt openings in other agencies, higher education institutions, or the Legislature.
 - ✓ Job openings are posted frequently at the Department of Personnel website: <http://www.dop.wa.gov/jobseekers/>

Examples of Return from Exempt

Exempt employee not appointed from a permanent classified service position:

When reduction of an exempt employee who was not appointed from a permanent classified state position occurs, keep the following in mind:

- The agency should give adequate notice to the employee (preferably at least two weeks).
- Exempt employees are not covered by the Civil Service Rules.
- Exempt employees without permanent classified status have no return or layoff rights to classified jobs and no appeal rights.

Example 1: *Reduction of an exempt employee who was not appointed from a permanent classified state position.*

<u>Hire Date</u>	<u>Title</u>	<u>Status</u>	<u>Agency</u>
1/1/04	Special Assistant	Nonpermanent	Security
1/1/05	Assistant Director	Exempt	Personnel
1/1/06	Deputy Director	Exempt	Ecology

When Ecology determines that the Deputy Director exempt appointment should end, the employee is notified. There is no return right, as the employee did not hold permanent status in the classified service. The employee is terminated and does not have an appeal right.

Exempt employee appointed from a permanent classified service position:

When reduction of an exempt employee who was appointed from a permanent classified general government position or Washington Management Service position occurs, keep the following in mind:

- The agency should give adequate notice to the employee (preferably at least two weeks).
- Exempt employees who had permanent classified status and were hired directly from general service have return rights to classified service in the highest class of position in which the employee previously held permanent status, or to a position of similar nature and salary.
- The exempt employee's return rights will be to the agency in which the highest class of position was held. The current agency should let that agency know the employee may be returning.
- Exempt employees are not covered by the Civil Service Rules. When returned to classified service, the employee is then covered by the Civil Service Rules.

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- For exempt employees who previously held permanent status in the classified service, AND are being terminated from exempt service as a result of gross misconduct or malfeasance, the statute terminates their return right. In this instance, DOP staff recommends that employers contact their Assistant Attorney General prior to issuance of any letter.

Example 2: *Reduction of an exempt employee who was appointed from a permanent classified state position. Classification has been abolished.*

<u>Hire Date</u>	<u>Title</u>	<u>Status</u>	<u>Agency</u>
1/1/05	Budget Analyst 3	WGS Classified	Revenue
1/1/06	Budget Director	Exempt	Revenue

The return right for the employee is to the highest job class the employee held in classified service. In this example, it is Budget Analyst 3, which was abolished. The employee may be returned to another job classification that is similar in nature and salary. The Department of Personnel will provide assistance in determining positions/classifications similar to the Budget Analyst 3.

Example 3: *Reduction of an exempt employee who was appointed from a Washington Management Service position.*

<u>Hire Date</u>	<u>Title</u>	<u>Status</u>	<u>Agency</u>
1/1/04	Mediator	WGS Classified	Personnel
1/1/05	Labor Relations Manager	WMS Classified	Security
1/1/06	Deputy Superintendent	Exempt	Human Service

The return right for the employee is to a WMS position at Security that is similar in nature and salary to the Labor Relations Manager position. Because WMS does not have job "classifications," it is recommended the agency track what has occurred to the Labor Relations Manager since the employee's appointment to exempt service. This will assist in determining what positions are currently similar in nature and where to set the salary. If the selected position is filled, the employee with the lowest retention rating or the least seniority is laid off. Layoff options within WMS would be considered at Security. It is possible that the employee may eventually have layoff rights to a Mediator position at Personnel.

Example 4: Return rights after multiple exempt appointments.

<u>Hire Date</u>	<u>Title</u>	<u>Status</u>	<u>Agency</u>
02/01/04	Computer Information Consultant 3	Permanent WGS Classified	Personnel
02/01/05	Assistant Director Data Processing	Exempt	Ecology
02/01/06	Information Services Manager	Exempt	Legislative Branch

When the employee is notified by the Legislative branch (e.g., House of Representatives) the appointment will end (or when the employee chooses to exercise return rights) the employee is notified and Department of Personnel is contacted. There was no interruption of service from 02/01/04 to the time the employee is notified of the end of the appointment. Therefore, the employee has a return right to Department of Personnel to a Computer Information Consultant 3 or a position similar in nature and salary.

Example 5: Return rights after multiple exempt appointments.

<u>Hire Date</u>	<u>Title</u>	<u>Status</u>	<u>Agency</u>
04/01/01	Accountant 2	Permanent WGS Classified	Personnel
04/01/02	Accounting Manager	Exempt	Personnel
04/01/03	Assistant Director	Exempt	Personnel
04/01/04	Resignation from state employment		
04/01/06 (rehired)	Deputy Director	Exempt	Personnel

The employee lost any return right to the classified service with the resignation and break in service on 04/01/04.

Sample Letter from Employee Notifying Agency
Of Intent to Exercise Return Rights

September 28, 2005

Ms. Jane Smith, HR Manager
Department of Widgets
P.O. Box 1111
Olympia, WA 98504

Re: Return from Exempt Appointment

Dear Ms. Smith:

I left the Department of Widgets on January 1, 2000, to accept an exempt appointment as Assistant Director in the Department of Telephone Services (DTS). I received a letter from (Appointing Authority) of DTS dated September 20, 2005, notifying me that my exempt appointment as the Assistant Director in the DTS will end at the close of business on October 4, 2005.

This is to inform you that as an employee who has held permanent status in Washington General Service (or Washington Management Service), I wish to exercise my right to return to classified service with the Department of Widgets. Please consider this letter as my application per WAC 357-19-195 and WAC 357-19-200.

I can be reached at 360-123-4567 if you have questions and I look forward to talking to you more about my return rights.

Sincerely,

Caroline Johnson
Assistant Director

cc: John Doe, HR Manager, DTS
Personnel File

State Civil Service Law (RCW) and Rules (WAC) References

State Civil Service Law (RCW)

Website: <http://apps.leg.wa.gov/rcw/default.aspx>

- RCW 41.06.070

Title 357 WAC (Civil Service Rules)

Website: <http://www.dop.wa.gov/Rules>

- WAC 357-04-025
- WAC 357-04-030
- WAC 357-19-195
- WAC 357-19-200
- WAC 357-19-205
- WAC 357-19-215
- WAC 357-19-220
- WAC 357-19-225
- WAC 357-58-450

Transition Assistance for Employers

Exempt transition actions are highly technical in nature and should be addressed on a case-by-case basis. The agency human resource manager should be involved early in each specific action. Department of Personnel Rules staff can be reached for assistance at (360) 664-6325 or send an email to: Rules@dop.wa.gov.

Assistance is also available for employers with questions about organizational impact as a result of exempt transitions. Please contact your assigned Client Service Manager at <http://www.dop.wa.gov/HRProfessionals/Consulting/CERSAgencyAssignments.htm>

Transition Assistance

Executive Search Services

Executive Search Services (ESS) assists state agencies, boards, and commissions in identifying, screening, and recruiting top-notch executive talent for the state of Washington. Over the past decade, ESS has assisted in hundreds of successful placements of highly qualified public sector executives for state, county and city agencies and organizations.

The unit operates and maintains an executive database and refers competitive candidates regularly. For more information, please go to:
<http://www.dop.wa.gov/AboutUs/DOPServices/ess.htm>

Employee Assistance Program (EAP)

The Washington State Employee Assistance Program provides:

- One-to-one confidential, professional assistance to all state employees and their family members experiencing personal problems relating to a variety of concerns, including transition.
- Consultation with agency management regarding employees facing difficult changes.

Job transition can be both difficult and emotional for employees and their families. EAP professionals have experience in assisting individuals working through the uncertainty of transition by:

- Initial one-to-one assistance considering the personal, professional and emotional impact of career transition.
- Referral to specialized additional assistance (coaching, counseling) in the community as needed.
- Assistance with developing a plan for the whole family in transition.

EAP is effectively used in conjunction with other services offered by the Department of Personnel. In stressful times, talking with an EAP professional can help in the transition of moving forward in a career.

EAP Contacts:

Olympia (360) 753-3260, Seattle (206) 281-6315, Spokane (509) 482-3686.
For more information on EAP, please go to: <http://www.dop.wa.gov/EAP>.

Washington Management Service Information

Exempt employees seeking new opportunities should consider applying for jobs in the Washington Management Service (WMS). The WMS offers flexibility in recruitment, screening, and hiring of job candidates. Each recruitment is handled individually by the hiring agency. Therefore, it is important to pursue opportunities directly with those agencies that have Washington Management Service positions.

- ***Do homework***
Use networking and research skills to find out which state agencies would be good matches for skills, knowledge, and career interests.
- ***Make contact***
Contact the agencies for specific information on career opportunities and recruiting plans. Agencies may choose to target recruitment efforts to reach the most qualified candidates, rather than using a broad “shotgun” approach to advertise job openings.
- ***Check it out***
Most, but not all, Washington Management Service positions are listed with the Department of Personnel. Check the Exempt and WMS employment opportunities page at <http://www.dop.wa.gov/JobSeekers/default.htm?OpeningType=3,4> for current openings.
- ***Sign up***
The Department of Personnel operates a mid-management candidate pool. This information is made available to agencies as requested when they have job openings. Agencies have the option of reviewing the candidate profile and contacting the applicants with information about the job openings. For more information on the mid-management candidate pool, call (360) 664-6266.

■ ***Learn more***

For general information about Washington Management Service, contact:

Washington State Department of Personnel

ATTN: WMS Recruiting

521 Capitol Way South

PO Box 47500

Olympia, WA 98504-7500

Phone: (360) 664-1960

Email: Information@Dop.wa.gov

Visit the Web: <http://www.dop.wa.gov/JobSeekers/WMS/WMSTipsforApplicant.htm>